

IN THE CIRCUIT COURT OF SHELBY COUNTY, TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

JANE DOE,

Plaintiff,

v.

Docket No. CT-4865-19
Division VII

SIGMA ALPHA EPSILON FRATERNITY, an
Illinois not-for-profit corporation;
SIGMA ALPHA EPSILON, TENNESSEE ZETA CHAPTER;
RHODES COLLEGE;
JOHN SMITH, and
DOES 1 to 3, inclusive,

Defendants.

**JOHN SMITH'S ANSWER TO PLAINTIFF'S COMPLAINT FOR DAMAGES FOR
NEGLIGENCE, ASSAULT, BATTERY, AND INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS**

TO THE HONORABLE MARY WAGNER, CIRCUIT JUDGE OF THE THIRTIETH
JUDICIAL DISTRICT OF TENNESSE AT MEMPHIS:

COMES NOW John Smith (hereinafter "Smith") and in Answer to "Plaintiff's Complaint
for Damages for Negligence, Assault, Battery, and Intentional Infliction of Emotional Distress"
("Complaint") filed by Jane Doe ("Doe" or "Plaintiff") respectfully states as follows:

SUMMARY OF THE CASE

Due to the extensive history of investigation and litigation arising from these alleged
facts, Smith believes that the Court will benefit from a summary of the history of this matter so
far. This is the third lawsuit arising from these allegations. Smith has already prevailed in two
preliminary injunction hearings in a lawsuit against Rhodes College arising from these
allegations, which was ultimately settled to the parties' mutual satisfaction.

Plaintiff, Jane Doe, a senior at Rhodes College in the spring semester of 2019 attended a party at the fraternity Sigma Alpha Epsilon, Tennessee Zeta Chapter (“SAE Local”) a local chapter of Sigma Alpha Epsilon, a national fraternal organization (“SAE National”) (collectively “SAE”)¹. She arrived intoxicated and separately from Smith. Smith was her “date,” to the event, though it was an expressly platonic relationship. Shortly after her arrival and of her own volition without encouragement, Doe began to consume substantial amounts of vodka, which she requested Smith provide her. Thereafter, Doe voluntarily used cocaine and then smoked a significant amount of marijuana, all of this in short order. After smoking the marijuana, Doe became obviously incapacitated. Despite the efforts of Smith and other attendees at the party, including SAE Members, non-members, and at least one of her sorority sisters, Doe belligerently refused water or aid until she began vomiting. Smith provided Doe with a bucket in which to vomit while Smith’s sorority sister (herein referred to as “Jane Jones”) held her head in her lap and held her hair back. Smith and a friend both contacted Doe’s roommate (herein referred to as “Jane Williams”) and requested that she pick Doe up and take her home.

Williams arrived between ten and fifteen minutes later, at which point she and others transported Doe home. During virtually this entire period, Doe was in the company of her sorority sister and numerous others. During this time, Doe spoke incoherently and, on two occasions, said “They raped me.” Based on this statement, Doe’s roommates engaged in a lengthy series of leading questions. (e.g. “Was it John Doe 1? Was it John Doe 2?” Doe failed to answer any of these questions verbally and gave “thumbs up” or “thumbs down” signals. There is absolutely no evidence that Doe even understood what she was being asked. She made incoherent statements accusing her sorority sister, who had cared for her, of unspecified conduct

¹ Smith will also use the term “SAE” when referring to the location on campus or other members, i.e. SAE House or SAE Members.

related to some event she only described as “it.” Recounting these events later, Doe’s roommate described Doe’s statements as, “[Jones] is bad, and [Doe] said [Jones] is the one that told them to do it and that it wouldn’t have happened without her.”

The next day, Doe purported no memory of what happened, but based on her roommate’s account, she asked to be taken to the hospital for a rape kit. The hospital contacted Shelby County Sheriff’s Department and the Mid-South Area Rape Crisis Center, where she was transported for a sexual assault examination and rape kit. Very little injury was noted, and what was noted was not consistent with the sexual assault that she later described (a story which varied significantly each time she told it).

The Memphis Police Department investigated thoroughly, but no charges have ever been brought against anyone. Doe participated to a limited degree in Rhodes’ internal investigation, ultimately refusing to testify in the disciplinary hearing against Smith and another student, “John Coe.”² Plaintiff’s Counsel did, however, attend the hearing holding in his hands the entire time a file folder marked “[Doe] v. SAE.” Rhodes elected to expel Smith and Coe, both of whom sued Rhodes College under Title IX of the Civil Rights Act of 1964 for gender discrimination. After prevailing in two preliminary injunction hearings under theories of erroneous outcome linked to gender discrimination and selective enforcement of Title IX, involving three days of argument and testimony as well as numerous depositions, Smith’s expulsion was ordered reversed and enjoined. Both Smith and Coe settled their cases with Rhodes College to the parties’ mutual satisfaction. Despite the overwhelming evidence produced in federal court that nothing happened and her own repeated admissions that she had little or no recollection of the events, Jane Doe now brings this lawsuit.

² Despite Doe’s assertion that she does not know the identity of anyone else involved, she only ever actually accused one person directly, not John Smith, but John Coe, another Rhodes Student, clearly one of the “unknown” Doe defendants to this suit.

FORMAL ANSWER

1. Denied insofar as the allegations directed at Smith. Further, it is specifically denied that Rhodes had ever been placed “on notice of predatory sexual practices” by Smith. No complaint of predatory sexual behavior was ever made against Smith before the allegations contained in this Complaint arose. The remaining allegations of this paragraph have no bearing on Smith and require no response. To the extent any other portion of this paragraph makes allegations against Smith, it is denied.
2. It is denied that Plaintiff was ever sexually assaulted at the SAE House. Smith specifically avers that numerous witnesses, male and female, were present during the entire period in which Plaintiff was present in the SAE house and all give nearly identical reports of Plaintiff’s conduct and expressly deny not only that she was sexually assaulted but that there was ever any opportunity for her to be sexually assaulted absent a grand conspiracy of silence among numerous people with no reason to keep such a secret. It is admitted that the event at the SAE house involved unregulated alcohol consumption and that Plaintiff voluntarily and enthusiastically partook of cocaine and marijuana, which were present at the SAE House. The remaining allegations of this paragraph have no bearing on Smith and require no response. To the extent any other portion of this paragraph makes allegations against Smith, it is denied.
3. It is admitted that there is an attic space in the SAE House that can only be accessed by a ladder. It is denied that the “unfinished attic” is “secluded.” In fact, it was occupied that evening by numerous people, male and female. It is admitted that this was the room

where SAE Members routinely smoked marijuana. The remaining allegations of this paragraph have no bearing on Smith and require no response. To the extent any other portion of this paragraph makes allegations against Smith, it is denied.

4. Admitted with the exception that Smith denies that Smith would suffer mental harm to Plaintiff due to the revelation of her identity. As Plaintiff has also sued Smith under a pseudonym, Smith has no objection to proceeding under pseudonyms. The allegations in this case are of a highly intimate nature and are of the sort that typically warrant proceeding under a pseudonym for all parties.
5. It is denied that Smith assaulted Plaintiff. Further, while Plaintiff was a student and attendee at Rhodes College, he was a resident of Texas throughout his tenure at Rhodes. He admits that he was a member of SAE Local and SAE National and over the age of 18 at the time of the party described in Plaintiff's complaint.
6. The allegations of this paragraph have no bearing on Smith and require no response. To the extent any other portion of this paragraph makes allegations against Smith, it is denied.
7. The allegations of this paragraph have no bearing on Smith and require no response. To the extent any other portion of this paragraph makes allegations against Smith, it is denied.
8. Admitted in part and denied in part. While, again, Smith avers that Plaintiff was not sexually assaulted on the night in question and that, therefore, no other party would be responsible, Plaintiff, during the investigative history of this matter through Rhodes College's internal Title IX process, has only ever identified one person, John Coe, as a perpetrator of a sexual assault, though at other points she claimed not to recall. Further,

Plaintiff, though her counsel, is specifically aware of Coe's identity because he was present for Rhodes internal sexual misconduct hearing, in which Coe was a respondent identified by name. Further, during the course of the two federal lawsuits in this matter, Plaintiff's Counsel attended the majority of the proceedings and certainly all of the substantive proceedings in which the various attendees who were present in the attic during the time that Doe claims she was assaulted were identified. The remaining allegations of this paragraph have no bearing on Smith and require no response. To the extent any other portion of this paragraph makes allegations against Smith, it is denied.

9. It is admitted that venue is proper in Shelby County, Tennessee. The remainder of this paragraph is denied.
10. The allegations of this paragraph have no bearing on Smith and require no response. To the extent any other portion of this paragraph makes allegations against Smith, it is denied.
11. The allegations of this paragraph have no bearing on Smith and require no response. To the extent any other portion of this paragraph makes allegations against Smith, it is denied.
12. The allegations of this paragraph have no bearing on Smith and require no response. To the extent any other portion of this paragraph makes allegations against Smith, it is denied.
13. The allegations of this paragraph have no bearing on Smith and require no response. To the extent any other portion of this paragraph makes allegations against Smith, it is denied.

14. The allegations of this paragraph have no bearing on Smith and require no response. To the extent any other portion of this paragraph makes allegations against Smith, it is denied.
15. The allegations of this paragraph have no bearing on Smith and require no response. To the extent any other portion of this paragraph makes allegations against Smith, it is denied.
16. The allegations of this paragraph have no bearing on Smith and require no response. To the extent any other portion of this paragraph makes allegations against Smith, it is denied.
17. The allegations of this paragraph have no bearing on Smith and require no response. To the extent any other portion of this paragraph makes allegations against Smith, it is denied.
18. Denied as to Smith. The remaining allegations of this paragraph have no bearing on Smith and require no response. To the extent any other portion of this paragraph makes allegations against Smith, it is denied.
19. The allegations of this paragraph have no bearing on Smith and require no response. To the extent any other portion of this paragraph makes allegations against Smith, it is denied.
20. Denied as to Smith. The remaining allegations of this paragraph have no bearing on Smith and require no response. To the extent any other portion of this paragraph makes allegations against Smith, it is denied.
21. It is admitted that Plaintiff frequently attended events or socialized at the SAE House. The remaining allegations of this paragraph have no bearing on Smith and require no

response. To the extent any other portion of this paragraph makes allegations against Smith, it is denied.

22. Denied.

23. It is admitted that Plaintiff was invited to a formal on February 14, 2019 at the SAE House. It is admitted, on information and belief, that the party was an authorized party. It is denied that it was “specifically planned so that copious amounts of alcohol and illegal drugs would be made available to members and guests.”

24. Denied as to Smith. The remaining allegations of this paragraph have no bearing on Smith and require no response. To the extent any other portion of this paragraph makes allegations against Smith, it is denied.

25. Smith admits that, at Plaintiff’s specific and repeated request, he provided her with several vodka drinks. Smith also avers that Plaintiff specifically informed him that she had been drinking and exchanged text messages in which she expressed a desire to drink to excess that evening. Smith denies encouraging Plaintiff to do anything. Contrary to this statement, Plaintiff enthusiastically participated of her own volition. While Plaintiff’s Complaint paints her as some form of suggestible minor lacking autonomy, she was, in fact, an adult over the age of 21, legally consuming alcohol of her own volition. Her use of cocaine was not compelled or encouraged. Plaintiff did go into the unfinished attic space, a space with in which she had been before. There, she voluntarily sat in a circle of people passing around a “gravity bong” from which she smoked a substantial amount of marijuana, a drug with which she was familiar. It is denied that Smith “took” her anywhere. She was, at various times, with Smith at the party and at others elsewhere. At one point she departed the party and then returned. It is admitted

that due to her voluntary drug and alcohol use, at some point became intoxicated to the point of incapacity. Smith avers that he and others laid her across several chairs and placed her head over a bucket so she would not asphyxiate and made attempts to get her to drink water. Her sorority sister, Jones, held her head in her lap for much of this time. The remaining allegations of this paragraph have no bearing on Smith and require no response.

26. The allegations of this paragraph have no bearing on Smith and require no response.

27. The allegations of this paragraph have no bearing on Smith and require no response.

28. The allegations of this paragraph have no bearing on Smith and require no response.

29. Denied as stated. It is specifically denied that Smith assaulted Plaintiff in any way, sexually or otherwise. In fact, the events of the evening played out thus:

- At 10:15 P.M., Plaintiff was awake and alert. In fact, at 11:03 P.M., Plaintiff posed for a photo with Smith in front of a Valentine's Day themed backdrop, wide-eyed and smiling. At this point, both she and Plaintiff were still downstairs and had not gone into the attic. Plaintiff's allegations seriously exaggerate the duration during which she was present at the party and incapacitated. Smith did not "lead" Plaintiff anywhere.
- At approximately 11:30, Doe's sorority sister, Jones, arrived at the party with her boyfriend. Smith stayed with Jones' boyfriend, and Jones and Doe went to the bathroom. Doe and Jones rejoined Smith and Jones' boyfriend with the intent of going into the attic.
- Plaintiff voluntarily smoked some marijuana and quickly became incoherent and began throwing up, at which point various people in the room, especially Jones

and Smith, began to try to ensure she was safe until someone could arrive to pick her up.

- Jones has stated under oath, “I felt full responsibility to make sure that she was taken – well taken care of and – and watched out for her as a sister that night.”
- Plaintiff’s Complaint states “In fact, her roommate was called to come and get her because she was so incapacitated.” What Plaintiff fails to state is that at 11:40 P.M., as soon as Plaintiff became incapacitated, Smith contacted Plaintiff’s roommate to advise her that Doe was not doing well, a significant fact which Plaintiff attempts to conveniently omit. At that time, Doe’s sorority sister, Jones, was taking care of her.
- At 11:58 P.M. it was apparent that Doe had become too ill to remain at the party, and Smith and Jones agreed that her roommate should come get her. Smith texted Doe’s roommate to come pick her up immediately.
- Jones held Doe’s head in her lap, offered to help her downstairs, offered her water, and generally tried to rouse her. Doe was mumbling incoherently.
- Jones then suggested that the smaller people in the room, including herself, should go downstairs and stabilize the ladder while the larger men in the room would lift her down. Three people remained in the attic with Doe while the others remained just below the opening to hold the ladder.
- One of the other individuals, John Coe, left the attic when Doe’s roommate called to go and lead her back to the attic through the party, which he did.

- Doe's roommate went up the ladder to the attic. Smith, Doe's roommate and another SAE member worked together to lower Doe through the attic entrance and down the ladder.
- Doe's roommate put Doe's arm over her shoulder and helped her stumble to the car.
- All of these witnesses (never fewer than 2 and as many as 9 at any given time) reported that no one inappropriately touched Doe at any point in time.

All of the statements made in this paragraph are taken from the sworn testimony of third-party witnesses or photographic evidence.

30. Denied. Plaintiff's "injuries" were documented. She had scraped knees and one bruise less than one inch long on each shin consistent with being on her knees throwing up. She had a one-centimeter bruise on her right hip and a 3x1-centimeter bruise on her right thigh, almost certainly from having to be hoisted down the ladder. It is denied that such minor injuries are consistent with "excruciating physical pain."

31. Admitted in part and denied in part. It is admitted that Rhodes policies require the reporting of sexual assaults, and it is admitted, on information and belief, that no one from SAE reported anything to Rhodes. However, it is denied that anyone was required to report these events *because no one present observed this alleged sexual assault.*

32. Denied.

Count 1: Negligence

33. Smith restates and incorporates his foregoing responses in answer to this Paragraph.

34. The allegations of this paragraph have no bearing on Smith and require no response.

35. The allegations of this paragraph have no bearing on Smith and require no response.

- 36. The allegations of this paragraph have no bearing on Smith and require no response.
- 37. The allegations of this paragraph have no bearing on Smith and require no response.
- 38. The allegations of this paragraph have no bearing on Smith and require no response.
- 39. The allegations of this paragraph have no bearing on Smith and require no response.
- 40. The allegations of this paragraph have no bearing on Smith and require no response.
- 41. Denied as to Smith and strict proof is demanded thereof.
- 42. Denied as to Smith and strict proof is demanded thereof.
- 43. Denied and strict proof is demanded thereof.
- 44. It is denied that Doe has suffered any damages and strict proof is demanded thereof.

Count II: Assault

- 45. Smith restates and incorporates his foregoing responses in answer to this Paragraph.
- 46. Denied and strict proof is demanded thereof.
- 47. Denied and strict proof is demanded thereof.
- 48. Denied and strict proof is demanded thereof.
- 49. Denied and strict proof is demanded thereof.
- 50. It is denied that Doe has suffered any damages and strict proof is demanded thereof.

Count III: Battery

- 51. Smith restates and incorporates his foregoing responses in answer to this Paragraph.
- 52. Denied and strict proof is demanded thereof.
- 53. Denied and strict proof is demanded thereof.
- 54. Denied and strict proof is demanded thereof.
- 55. Denied and strict proof is demanded thereof.
- 56. It is denied that Doe has suffered any damages and strict proof is demanded thereof.

Count IV: Intentional Infliction of Emotional Distress

57. Smith restates and incorporates his foregoing responses in answer to this Paragraph.

58. Denied and strict proof is demanded thereof.

59. Denied and strict proof is demanded thereof.

60. Denied and strict proof is demanded thereof.

61. Denied and strict proof is demanded thereof.

62. Denied and strict proof is demanded thereof.

63. Denied and strict proof is demanded thereof.

Count V: Negligent Infliction of Emotional Distress

64. Smith restates and incorporates his foregoing responses in answer to this Paragraph.

65. Denied and strict proof is demanded thereof.

66. Denied and strict proof is demanded thereof.

Affirmative Defenses

67. Plaintiff has failed to state a claim for which relief may be granted.

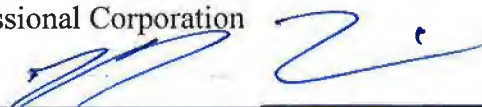
68. Plaintiff has failed to join indispensable parties.

WHEREFORE, PREMISES CONSIDERED, Defendant John Smith prays that this Court dismiss Plaintiff's Complaint with prejudice and assess court costs against her.

Respectfully submitted,

BLACK MCLAREN JONES RYLAND & GRIFFEE
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By:



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was filed electronically. Notice of this filing will be sent by operation of the Court's ECF system, and e-mail, this 13th day of November, 2019 to:

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